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NYC CORRECTIVE CHIROPRACTIC CARE, P.C.

UNITED STATES DISTRICT COURT
SOUTHER DISTRICT OF NEW YORK

NYC CORRECTIVE CHIROPRACTIC
CARE, P.C. A/A/O SARANNA
BELGRAVE

Plaintiff

v.

EMPIRE HEALTH CHOICE
ASSURANCE, INC. FORMERLY
KNOWN AS EMPIRE BLUE CROSS
AND BLUE SHIELD

Defendant.

Civil Action No.:

CIVIL ACTION

COMPLAINT AND JURY DEMAND

Plaintiff, NYC CORRECTIVE CHIROPRACTIC CARE, P.C. ("Plaintiff" or Corrective") as assignee and legal representative of SARANNA BELGRAVE ("Belgrave") by and through its attorneys, Santarcangelo Law, L.L.C., by way of Complaint against Defendant EMPIRE HEALTH CHOICE ASSURANCE, INC. formerly known as EMPIRE BLUE CROSS AND BLUE SHIELD ("BCBS") hereby alleges upon knowledge as to the corporation and its own acts, and upon information and belief as to all other matters, based upon, *inter alia*, the investigation made by and through his attorneys, as follows:

PARTIES

- 1) Belgrave's employer maintains an "Employee Health Benefit Plan" (the "Plan") as defined in 29 U.S.C. § 1002 (1).

- 2) Plaintiff, NYC Corrective Chiropractic Care, P.C. is a Professional Corporation registered in the State of New York with a principal place of business at 280 Madison Avenue, Suite 1211, New York, NY 10016.
- 3) Defendant Empire Health Choice Assurance, Inc. formerly known as Empire Blue Cross and Blue Shield serves as third-party administrator of the Plan and/or provides health insurance to beneficiaries and participants of the Plan. Upon information and belief, BCBS has a principal place of business in New York located at One Liberty Plaza, 165 Broadway, 13th and 14th Floors, New York, NY, 10006. BCBS has a registered agent of CT Corporation System, 111 Eighth Avenue, New York, NY 10011.
- 4) Belgrave is a “participant” under the plan as defined by 29 U.S.C. §1002 (7) and a “beneficiary” under the Plan as defined by 29 U.S.C. §1002 (8).

JURISDICTION AND VENUE

- 5) BCBS’ actions in administering the Plan are governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 to 1461 (“ERISA”). This Court, has subject matter jurisdiction over ERISA claims stated herein under 28 U.S.C. §1331 and 29 U.S.C. § 1132(e).
- 6) Venue is appropriate in this District under 28 U.S.C. §1391, and 29 U.S.C. §1332(e)(2) because: (i) BCBS resides, is found, has an agent, and transacts business in this District; (ii) BCBS conducts a substantial amount of business in this District; and (iii) BCBS insures and/or administers the Plan in this District.

STANDING

- 7) As a participant of the Plan as that term is defined in 29 U.S.C. §1002(7) and a beneficiary of the Plan as that term is defined in 29 U.S.C. §1002(8), Belgrave has standing to bring this action under 29 U.S.C. §1132(a)(1)(B).
- 8) By and through Belgrave’s execution of a Power of Attorney, Corrective is an “authorized representative” of Belgrave’s and therefore may bring this action on behalf of Belgrave under 29 U.S.C. §1132 (a)(1)(B). The assignment of benefits is attached as Exhibit 1 and is incorporated by reference.

FACTS COMMON TO ALL COUNTS

- 9) At all times relevant hereto, Belgrave was both a participant and a beneficiary under the Plan, BCBS Insured No. YLD82320134.
- 10) At all times relevant hereto, NYC Corrective Chiropractic Care, P.C. (EIN No. 27-4578663) a domestic professional corporation operated in compliance with New York Law.
- 11) At all times relevant hereto, under the terms and conditions of the Plan, Belgrave was entitled to receive, *inter alia*, benefits for outpatient chiropractic care.

- 12) Belgrave underwent outpatient chiropractic care performed by Corrective between July 13, 2013 through November 6, 2013.
- 13) Corrective timely submitted claims for reimbursement totaling at least \$3,095.00 to BCBS with respect to professional services rendered by Corrective to Belgrave ("professional fees") utilizing a CMS-1500 Health Insurance Claim Form.
- 14) BCBS paid all or part of the claims for reimbursement with respect to professional fees for services performed by Corrective to Belgrave.
- 15) BCBS denied a majority of the claims for reimbursement with respect to the professional fees for services provided by Corrective to Belgrave.
- 16) BCBS' stated reason for denying payment to Corrective for professional services provided by Corrective to Belgrave is that the information provided does not support medical necessity.
- 17) By making partial payments during the relevant period BCBS acknowledges the medical necessity of the chiropractic care rendered to Belgrave by Corrective.
- 18) BCBS is responsible under the Plan for the necessary medical care rendered to Belgrave by Corrective.
- 19) To date, BCBS has not provided an adequate response to Corrective's attempts to appeal the professional fee claim denials in issue, on behalf of Belgrave.
- 20) Corrective a/a/o Belgrave has exhausted all internal remedies.
- 21) Any administrative remedies that may be required to be pursued under ERISA have been exhausted, should be deemed exhausted under applicable regulations, or would be futile under the circumstances, and are therefore excused.
- 22) Because BCBS failed to pay the fee claims complained of herein within the time frames set forth in 29 C.F.R. §2560.503-1, Corrective is permitted to immediately pursue remedies available under 29 U.S.C. §1132 on behalf of BCBS.

FIRST COUNT

- 23) Plaintiff repeats, realleges and incorporates the allegations of all prior paragraphs as if set forth at length herein.
- 24) By failing to pay benefits to Belgrave and/or Corrective for professional services provided by Corrective to Belgrave, BCBS violated its duties and obligations under the Plan.
- 25) Because Belgrave was a participant and beneficiary of the Plan, and because Corrective is the authorized representative of Belgrave, Corrective has standing to bring this cause of action under 29 U.S.C. §1132(a)(1)(B) to enforce rights created by the Plan and to seek benefits relating to services rendered by Corrective.

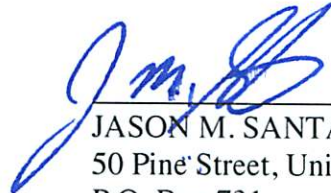
Wherefore, Plaintiff Corrective, as the authorized representative of Belgrave, demands judgment against Defendant BCBS, as follows:

- A) Declaring that Defendant BCBS violated its duties and obligations under the Plan by failing to pay benefits relating to professional services Belgrave received at Corrective;
- B) Directing Defendant BCBS to pay benefits to Corrective relating to professional services Belgrave received at Corrective;
- C) Statutory attorneys fees;
- D) Costs of suit; and
- E) Such other and further relief as the Court may deem equitable and just.

FIRST COUNT

Pursuant to FRCP 38(b), plaintiff demands a trial by jury as to all issues so triable.

Respectfully Submitted,
SANTARCANGELO LAW, L.L.C



JASON M. SANTARCANGELO, ESQ.
50 Pine Street, Unit 5H
P.O. Box 731
Montclair, New Jersey 07042
Attorney for Plaintiff

Date: September 26, 2014

EXHIBIT 1

ASSIGNMENT OF BENEFITS / ERISA AUTHORIZED REPRESENTATIVE FORM

Patient: Saranna Belgrave
D.O.B.: 7/15/83
ID #: YLD 82320134

Provider: Dr. Ali D. Morse, D.C. of NYC Corrective Chiropractic Care, P.C.
Address: 280 Madison Ave. Suite 1211 New York, NY 10016

ERISA Authorization

I Saranna Belgrave hereby designate and authorize, my provider, Dr. Ali D. Morse, D.C. of NYC Corrective Chiropractic Care, P.C. the full extent permissible under law and under any applicable insurance policy and/or employee health care benefit plan, as my Authorized Representative: (1) the right and ability to act on my behalf in connection with any claim, right, or cause in action that I may have under such insurance policy and/or benefit plan. (2) the right and ability to act on my behalf to pursue such claim, right, or cause of action in connection with said insurance policy and/or benefit plan (including but not limited to, the right to act on my behalf in respect to a benefit plan governed by the provisions of ERISA as provided in 29 C.F.R. §2560.5031(b)(4). This with respect to any healthcare expense incurred, as a result of the services I received from my provider, to the extent permissible under the law, to claim on my behalf, such benefits, claims, or reimbursement, and any other applicable remedy, including fines.

A photocopy of this Assignment/Authorization shall be as effective and valid as the original.

Assignment of Insurance Benefits

I hereby assign all applicable health insurance benefits to which I and/or my dependents are entitled to my Provider, Dr. Ali D. Morse, D.C. of NYC Corrective Chiropractic Care. I certify that the health insurance information that I provided to my provider is accurate and that I am responsible for keeping it updated.

I hereby authorize Dr. Ali D. Morse, D.C. of NYC Corrective Chiropractic Care to submit claims, on my or my dependent's behalf, to the benefit plan (or its administrator) listed on the current insurance card I provided to Dr. Ali D. Morse, D.C. I also hereby instruct my benefit plan (or its administrator) to pay Dr. Ali D. Morse, D.C. directly for services rendered to me or my dependents. To the extent that my current policy prohibits direct payment to Provider, I hereby instruct and direct my benefit plan (or its administrator) to provide documentation stating such non-assignment to myself and my provider upon request. Upon proof of such non-assignment, I instruct my benefit plan (or its administrator) to make the check to me and mail it directly to Provider.

I am fully aware that having health insurance does not absolve me of my responsibility to ensure that my bills for professional services from my provider are paid in full. I also understand that I am responsible for all amounts not covered by my health insurance, including co-payments, co-insurance, and deductibles.

Financial Responsibility

I have requested professional services from Dr. Ali D. Morse, D.C. (NYC Corrective Chiropractic Care) on behalf of myself and/or my dependents, and understand that by making this request, I am responsible for all charges incurred during the course of said services. I understand that all fees for said services are due and payable on the date services are rendered and agree to pay all such charges incurred in full immediately upon presentation of the appropriate statement unless other arrangements have been made in advance.

Authorization to Release Information

I hereby authorize my provider, Dr. Ali D. Morse, D.C. to: (1) release any information necessary to my health benefit plan (or its administrator) regarding my illness and treatments; (2) process insurance claims generated in the course of examination or treatment; and (3) allow a photocopy of my signature to be used to process insurance claims and potential denials of any kind. This order will remain in effect until revoked by me in writing or after one year.

Patient

SARANNA BELGRAVE

Policyholder/Insured

Date

Date